the merger, S receives consideration consisting of 50% P voting stock and 50% cash. Viewed independently of any other step, P's acquisition of T stock constitutes a qualified stock purchase. As part of the plan that includes P's acquisition of the T stock, T subsequently merges into P. Viewed independently of any other step, T's merger into P qualifies as a liquidation described in section 332. Absent the application of paragraph (c)(2) of this section, the step transaction doctrine would apply to treat P's acquisition of the T stock and T's merger into P as an acquisition by P of T's assets in a reorganization described in section 368(a). P and S do not make a section 338(h)(10) election with respect to P's purchase of the T stock.

(ii) Because P and S do not make an election under section 338(h)(10) for T, P's acquisition of the T stock and T's merger into P is treated as part of a reorganization described in section 368(a).

Example 12. Stock acquisition followed by upstream merger—with section 338(h)(10) election. (i) The facts are the same as in *Example 11* except that P and S make a joint election under section 338(h)(10) for T.

(ii) Pursuant to paragraph (c)(2) of this section, as a result of the election under section 338(h)(10), for all Federal tax purposes, P's acquisition of the T stock is treated as a qualified stock purchase and P's acquisition of the T stock is not treated as part of a reorganization described in section 368(a).

Example 13. Stock acquisition followed by brother-sister merger—with section 338(h)(10) election. (i) The facts are the same as in *Example 12*, except that, following P's acquisition of the T stock, T merges into X, a domestic corporation that is a wholly owned subsidiary of P. Viewed independently of any other step, T's merger into X qualifies as a reorganization described in section 368(a). Absent the application of paragraph (c)(2) of this section, the step transaction doctrine would apply to treat P's acquisition of the T stock and T's merger into X as an acquisition by X of T's assets in a reorganization described in section 368(a).

(ii) Pursuant to paragraph (c)(2) of this section, as a result of the election under section 338(h)(10), for all Federal tax purposes, P's acquisition of T stock is treated as a qualified stock purchase and P's acquisition of T stock is not treated as part of a reorganization described in section 368(a).

Example 14. Stock acquisition that does not qualify as a qualified stock purchase followed by upstream merger. (i) The facts are the same as in *Example 11*, except that, in the statutory merger of Y into T, S receives only P voting stock.

(ii) Pursuant to §1.338–3(c)(1)(i) and paragraph (c)(2) of this section, no election under section 338(h)(10) can be made with respect to P's acquisition of the T stock because, pursuant to relevant provisions of law, including the step transaction doctrine, that acquisition followed by T's merger into P is treated as a reorganization described in section 368(a)(1)(A), and that acquisition, viewed independently of T's merger into P, does not constitute a qualified stock purchase under section 338(d)(3). Accordingly, P's acquisition of the T stock and T's merger into P is treated as a reorganization described in section 368(a).

(f) *Inapplicability of provisions.* The provisions of section 6043, §§1.331-1(d) and 1.332-6 (relating to information returns and recordkeeping requirements for corporate liquidations) do not apply to the deemed liquidation of old T under paragraph (d)(4) of this section.

(g) *Required information.* The Commissioner may exercise the authority granted in section 338(h)(10)(C)(iii) to require provision of any information deemed necessary to carry out the provisions of section 338(h)(10) by requiring submission of information on any tax reporting form.

(h) *Effective date.* This section is applicable to stock acquisitions occurring on or after July 5, 2006. For stock acquisitions occurring before July 5, 2006, see §1.338(h)(10)–1T as contained in the edition of 26 CFR part 1, revised as of April 1, 2006.

[T.D. 8940, 66 FR 8950, Feb. 13, 2001, as amended by T.D. 9071, 68 FR 40768, July 9, 2003; T.D. 9264, 71 FR 30607, May 30, 2006; T.D. 9271, 71 FR 38075, July 5, 2006; T.D. 9329, 72 FR 32808, June 14, 2007]

§ 1.338(i)–1 Effective/applicability date.

(a) *In general.* The provisions of §§1.338–1 through 1.338–7, 1.338–10 and 1.338(h)(10)–1 apply to any qualified stock purchase occurring after March 15, 2001. For rules applicable to qualified stock purchases on or before March 15, 2001, see §§1.338–1T through 1.338–7T, 1.338–10T, 1.338(h)(10)–1T and 1.338(i)–1T in effect prior to March 16, 2001 (see 26 CFR part 1 revised April 1, 2000).

(b) *Section 338(h)(10) elections for S corporation targets.* The requirements of §§1.338(h)(10)–1T(c)(2) and 1.338(h)(10)–1(c)(2) that S corporation shareholders who do not sell their stock must also consent to an election under section 338(h)(10) will not invalidate an otherwise valid election made on the September 1997 revision of Form 8023, ''Elections Under Section 338 For Corporations Making Qualified Stock Purchases,'' not signed by the nonselling shareholders, provided that the S corporation and all of its shareholders (including nonselling shareholders) report the tax consequences consistently with the results under section 338(h)(10).

(c) *Section 338 elections for insurance company targets*—(1) *In general.* The rules of §1.338–11 apply to qualified stock purchases occurring on or after April 10, 2006.

(2) *New target election for retroactive application*—(i) *Availability of election.* New target may make an irrevocable election to apply the rules in §§1.338–11 (including the applicable provisions in §§1.197–2(g)(5), 381(c)(22)–1, and 846) in whole, but not in part, to a qualified stock purchase occurring before April 10, 2006 for which a section 338 election is made, provided that new target's first taxable year and all subsequent affected taxable years are years for which an assessment of deficiency or a refund for overpayment is not prevented by any law or rule of law. In the case of a section 338 election for which a section 338(h)(10) election is made (or a section 338 election for a foreign target), new target may make the election to apply the regulations retroactively without regard to whether old target makes the election. In the case of a section 338 election for a domestic target for which no section 338(h)(10) election is made, new target may make the election to apply the regulations retroactively only if old target also makes the election. Paragraph (c)(2)(ii) of this section prescribes the time and manner of the election for new target.

(ii) *Time and manner of making the election for new target.* New target may make an election described in paragraph (c)(2)(i) of this section by attaching a statement to its original or amended income tax return for its first taxable year. The statement must be entitled ''Election to Retroactively Apply the Rules in §§1.338–11 (including the applicable provisions in §§1.197–2(g)(5), 1.381(c)(22)–1 and 846) in whole to a transaction completed before April 10, 2006'' and must include the following information—

(A) The name and E.I.N. for new target; and

(B) The following declaration (or a substantially similar declaration): New target has amended its income tax returns for its first taxable year and for all affected subsequent years to reflect the rules in §§1.338–11 (including the applicable provisions in §§197–2(g)(5), 1.381(c)(22)–1 and 846). All other parties whose income tax liabilities are affected by new target's election have amended their income tax returns for all affected years to reflect the rules in §§1.338–11 (including the applicable provisions in §§1.197–2(g)(5), 1.381(c)(22)–1 and 846).

(3) *Old target election for retroactive application*—(i) *Availability of election.* Old target may make an irrevocable election to apply the rules in §§1.338–11 (including the applicable provisions in §§1.197–2(g)(5), 1.381(c)(22)–1 and 846) in whole, but not in part, to a qualified stock purchase occurring before April 10, 2006 for which a section 338 election is made, provided that old target's taxable year that includes the deemed sale tax consequences and all subsequent affected taxable years are years for which an assessment of deficiency or a refund for overpayment is not prevented by any law or rule of law. In the case of a section 338 election for which a section 338(h)(10) election is made (or a section 338 election for a foreign target), old target may make the election to apply the regulations retroactively without regard to whether new target makes the election. In the case of a section 338 election for a domestic target for which no section 338(h)(10) election is made, old target may make the election to apply the regulations retroactively only if new target also makes the election. Paragraph (c)(3)(ii) of this section prescribes the time and manner of the election for old target.

(ii) *Time and manner of making the election for old target.* Old target may make an election described in paragraph (c)(3)(i) of this section by attaching a statement to each affected party's original or amended income tax return for the taxable year that includes the deemed sale tax consequences. The statement must be entitled ''Election to Retroactively Apply the Rules in §§1.338–11 (including the applicable provisions in §§1.197–2(g)(5), 1.381(c)(22)–1 and 846) to a transaction completed before April 10, 2006'' and must include the following information—

(A) The name and E.I.N. for old target; and

(B) The following declaration (or a substantially similar declaration): Old target has amended its income tax returns for the taxable year that includes the deemed sale tax consequences and for all affected subsequent years to reflect the rules in §§1.338–11 (including the applicable provisions in §§1.197–2(g)(5), 1.381(c)(22)–1 and 846). All other parties whose income tax liabilities are affected by old target's election have amended their income tax returns for all affected years to reflect the rules in §§1.338–11 (including the applicable provisions in §§1.197–2(g)(5), 1.381(c)(22)–1 and 846).

[T.D. 8940, 66 FR 9954, Feb. 13, 2001, as amended by T.D. 9257, 71 FR 18003, Apr. 10, 2006; T.D. 9377, 73 FR 3873, 3874, Jan. 23, 2008]

COLLAPSIBLE CORPORATIONS; FOREIGN PERSONAL HOLDING COMPANIES

§ 1.341–1 Collapsible corporations; in general.

Subject to the limitations contained in §1.341–4 and the exceptions contained in §1.341–6 and §1.341–7(a), the entire gain from the actual sale or exchange of stock of a collapsible corporation, (b) amounts distributed in complete or partial liquidation of a collapsible corporation which are treated, under section 331, as payment in exchange for stock, and (c) a distribution made by a collapsible corporation which, under section 301(c)(3), is treated, to the extent it exceeds the basis of the stock, in the same manner as a gain from the sale or exchange of property, shall be considered as ordinary income.

[T.D. 7655, 44 FR 68459, Nov. 29, 1979]

§ 1.341–2 Definitions.

(a) *Determination of collapsible corporation.* (1) A collapsible corporation is defined by section 341(b)(1) to be a corporation formed or availed of principally (i) for the manufacture, construction, or production of property, (ii) for the purchase of property which (in the hands of the corporation) is property described in section 341(b)(3), or (iii) for the holding of stock in a corporation so formed or availed of, with a view to (*a*) the sale or exchange of stock by its shareholders (whether in liquidation or otherwise), or a distribution to its shareholders, prior to the realization by the corporation manufacturing, constructing, producing, or purchasing the property of a substantial part of the taxable income to be derived from such property, and (*b*) the realization by such shareholders of gain attributable to such property. See §1.341–5 for a description of the facts which will ordinarily be considered sufficient to establish whether or not a corporation is a collapsible corporation under the rules of this section. See paragraph (d) of §1.341–5 for examples of the application of section 341.

(2) Under section 341(b)(1) the corporation must be formed or availed of with a view to the action therein described, that is, the sale or exchange of its stock by its shareholders, or a distribution to them prior to the realization by the corporation manufacturing, constructing, producing, or purchasing the property of a substantial part of the taxable income to be derived from such property, and the realization by the shareholders of gain attributable to such property. This requirement is satisfied in any case in which such action was contemplated by those persons in a position to determine the policies of the corporation, whether by reason of their owning a majority of the voting stock of the corporation or otherwise. The requirement is satisfied whether such action was contemplated, unconditionally, conditionally, or as a recognized possibility. If the corporation was so formed or availed of, it is immaterial that a particular shareholder was not a shareholder at the time of the manufacture, construction, production, or purchase of the property, or if a shareholder at such time, did not share in such view. Any gain of such a shareholder on his stock in the corporation shall be treated in the same manner as gain of a shareholder who did share in such view. The existence of a bona fide business reason for doing business in the corporate form does not, by itself, negate the fact that the corporation may also have been formed